United Nations/International Maritime Organization

Diplomatic Conference on Arrest of Ships

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UNITED NATIONS/INTERNATIONAL MARITIME ORGANIZATION
DIPLOMATIC CONFERENCE ON ARREST OF SHIPS

Held at the Palais des Nations, Geneva,
from 1 to 12 March 1999

FINAL ACT

and

INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

GE.99-51000

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FINAL ACT OF THE UNITED NATIONS/INTERNATIONAL MARITIME ORGANIZATION DIPLOMATIC CONFERENCE ON ARREST OF SHIPS

1. The General Assembly of the United Nations, by resolution 52/182 of 18 December 1997, endorsed the convening of a Diplomatic Conference in order to consider and adopt a convention on arrest of ships.

2. The United Nations/International Maritime Organization Diplomatic Conference on Arrest of Ships was convened at Geneva from 1 to 12 March 1999.

3. Representatives from the following States participated in the Conference: Algeria, Angola, Argentina, Australia, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kenya, Latvia, Lebanon, Liberia, Lithuania, Madagascar, Malta, Marshall Islands, Mauritania, Mexico, Monaco, Morocco, Mozambique, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, and Yemen.

4. Hong Kong Special Administrative Region of China and Macao, associate members of the International Maritime Organization, were represented by observers.

5. The following intergovernmental organizations were represented by an observer: Arab Labour Organization, Organization of African Unity, Organization of American States, Organization of the Islamic Conference, Intergovernmental Organization for International Carriage by Rail.

6. The following non-governmental organizations were represented by an observer: <u>general category</u>: International Chamber of Commerce, International Confederation of Free Trade Unions, World Federation of United Nations Associations; <u>special category</u>: International Ship Suppliers Association, International Association of Ports and Harbours, Latin American Association of Navigational Law and Law of the Sea, International Chamber of Shipping, Comité Maritime International, Institute of International Container Lessors, Ibero-

American Institute of Maritime Law, International Group of P&I Clubs, International Union for Conservation of Nature and Natural Resources.

7. The Conference elected the following officers:

President:	Mr. Zhu Zengjie (China)
Vice-Presidents:	Mrs. Ida Barinova (Russian Federation) Mr. Marc Gauthier (Canada) Mr. Mykola Maimeskul (Ukraine) Mr. Mahmoud Bahey Eldin Ibrahim Nasrah (Egypt) Mr. Eladio Peñaloza (Panama) Mr. Luigi Rovelli (Italy) Mr. Lalchand K. Sheri (Singapore)
Rapporteur-General:	Mr. Walter de Sa'Leitao (Brazil)

8. The Conference established a Main Committee, a Drafting Committee and a Credentials Committee.

Main Committee

Chairman:	Mr. K.J. Gombrii (Norway)
Members:	open-ended

Drafting Committee

Chairman:	Mr. Malcolm J. Williams, Jr. (United States of America)
Core members:	Algeria, Argentina, Belgium, China, Côte d'Ivoire, Croatia, Denmark, Egypt, France, Gambia, Germany, Ghana, Lithuania, Mexico, Russian Federation, Spain, Sri Lanka, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Credentials Committee

Chairman:	Ms. Sama Payman (Australia)
Members:	Australia, Benin, Brazil, China, Haiti, Mozambique, Philippines, Russian Federation, United States of America.

9. The secretariat of the Conference included the following officers: Secretary-General of UNCTAD, Mr. Rubens Ricupero; Executive Secretary, Mr. Jean Gurunlian, Director, Division for Services Infrastructure for Development and Trade Efficiency, UNCTAD; Deputy Executive Secretary, Mrs. Rosalie Balkin, Director, Legal Affairs and External Relations Division, IMO; Mrs. Monica N. Mbanefo, Senior Deputy Director, IMO; Mr. Agustín Blanco-Bazán, Senior Legal Officer, IMO; Ms. Mahin Faghfouri, Head, Legal Unit, SITE, UNCTAD; Mr. Carlos Moreno, Legal Officer, SITE, UNCTAD; Mr. Erik Chrispeels, Senior Legal Officer, UNCTAD; Mr. Awni Behnam, Secretary of the Conference, UNCTAD; Mr. Karma Tenzing, Deputy Secretary of the Conference, UNCTAD.

10. The Conference had before it, as a basis for its work, the draft articles for a convention on arrest of ships[1], prepared by the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, and the compilation of comments and proposals by Governments, and by intergovernmental and non-governmental organizations, on the draft convention on arrest of ships[2]. The Conference adopted its rules of procedure[3] and its agenda.[4]

11. On the basis of its deliberations as recorded in its report,[5] the Conference established the text of the INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999.

12. The text of the Convention was adopted by the Conference on 12 March 1999. The Convention will be open for signature at United Nations Headquarters, New York, from 1 September 1999 to and including 31 August 2000.

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[1] TD/B/IGE.1/5.

[2] A/CONF.188/3 and Add.1-3.

[3] A/CONF.188/2.

[4] A/CONF.188/1.

[5] A/CONF.188/5.

Done in Geneva, on this twelfth day of March, one thousand nine hundred and ninety-nine, in one original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic. The original of the Final Act shall be deposited in the archives of the United Nations Secretariat.

Zhu Zengjie
President of the Conference

R. Ricupero
Secretary-General of UNCTAD

J. Gurunlian
Executive Secretary of the Conference

R. Balkin
Deputy Executive Secretary of the Conference

M. Faghfouri
Head, Legal Unit, SITE

E. Chrispeels
Senior Legal Officer

A. Behnam
Secretary of the Conference

IN WITNESS WHEREOF the undersigned representatives have signed this Final Act.

The States whose representatives signed the Final Act are: Algeria, Argentina, Australia, Belgium, Benin, Brazil, Cameroon, Canada, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guinea, Haiti, Honduras, Indonesia, Iran (Islamic Republic of), Italy, Japan, Latvia, Liberia, Lithuania, Madagascar, Malta, Marshall Islands, Mexico, Monaco, Mozambique, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Romania, Russian Federation, Singapore, Slovenia, Spain, Sri Lanka, Sudan, Syrian Arab Republic, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Viet Nam.

INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

The States Parties to this Convention,

Recognizing the desirability of facilitating the harmonious and orderly development of world seaborne trade,

Convinced of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields,

Have agreed as follows:

Article 1
Definitions

For the purposes of this Convention:

1. "Maritime Claim" means a claim arising out of one or more of the following:

(a) loss or damage caused by the operation of the ship;

(b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

(c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);

(e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has

been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

(m) construction, reconstruction, repair, converting or equipping of the ship;

(n) port, canal, dock, harbour and other waterway dues and charges;

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

(p) disbursements incurred on behalf of the ship or its owners;

(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;

(s) any dispute as to ownership or possession of the ship;

(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

(u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;

(v) any dispute arising out of a contract for the sale of the ship.

2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.

3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

4. "Claimant" means any person asserting a maritime claim.

5. "Court" means any competent judicial authority of a State.

Article 2
Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.

2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.

3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

Article 3
Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or

(c) the claim is based upon a mortgage or a 'hypothèque' or a charge of the same nature on the ship; or

(d) the claim relates to the ownership or possession of the ship; or

(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:

(a) owner of the ship in respect of which the maritime claim arose; or

(b) demise charterer, time charterer or voyage charterer of that ship.

This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Article 4
Release from arrest

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:

(a) the claim for which the ship has been arrested, or

(b) the value of the ship,

whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

6. Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

Article 5
Right of rearrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:

(a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or

(b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or

(c) the ship arrested or the security previously provided was released either:

(i) upon the application or with the consent of the claimant acting on reasonable grounds, or

(ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

(a) the nature or amount of the security already provided in respect of the same claim is inadequate; or

(b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

Article 6
Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide

security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and provided.

2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

(a) the arrest having been wrongful or unjustified, or

(b) excessive security having been demanded and provided.

3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.

4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.

5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

Article 7
Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that

refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

(a) does not have jurisdiction to determine the case upon its merits; or

(b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article,

such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

(a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and

(b) such recognition is not against public policy (*ordre public*).

6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

Article 8
Application

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

Article 9
Non-creation of maritime liens

Nothing in this Convention shall be construed as creating a maritime lien.

Article 10
Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :

(a) ships which are not seagoing;
(b) ships not flying the flag of a State Party;
(c) claims under article 1, paragraph 1 (s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition

and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

Article 11
Depositary

This Convention shall be deposited with the Secretary-General of the United Nations

Article 12
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 13
States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references

in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

Article 14
Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

Article 15
Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

Article 16
Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 17
Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.